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Attorneys for Defendant  
NITEK International, LLC.

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

NETWORK VIDEO TECHNOLOGIES, INC.,	)	Case No. C 08 2208 MHP
	)	
Plaintiff,	)	<b>DEFENDANT NITEK'S</b>
	)	<b>ADMINISTRATIVE MOTION TO SET</b>
v.	)	<b>ITS F.R.C.P. 12(B)(1) MOTION TO</b>
	)	<b>DISMISS FOR HEARING ON JULY 28,</b>
	)	<b>2008</b>
NITEK INTERNATIONAL, LLC and DOES 1-10	)	
	)	
Defendant.	)	

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

NITEK INTERNATIONAL, LLC ("NITEK") is filing this administrative motion for a hearing date for its F.R.C.P. 12(B)(1) Motion to Dismiss on July 28, 2008, in advance of the Court's Case Management Conference scheduled for August 18, 2008. This administrative motion is made on the grounds that:

1. A prior action filed in United States District Court in the Central District of Los Angeles has already adjudicated this matter. In the case of *Network Video Technologies Inc. v. Nitek International*, Civil Action CV-07-4789 AHM (RZx) and this matter is duplicative.

2. The action filed in the United States District Court for the Northern District sets forth the same facts and legal issues that were already adjudicated before Judge Matz in the Central District matter.

3. NVT had appealed the dismissal of the case in the United States District Court for the Central District, and that case has been docketed in the Court of Appeals on April 14, 2008.

4. Judicial economy mandates that the Court deal with the dismissal of this action at an early stage prior to the first Case Management Conference.

This administrative motion will be based upon the accompanying Memorandum of Points and Authorities, the accompanying Declarations of Robert S. Niemann, the papers and records on file in this action.

**ISSUE TO BE DECIDED**

Whether this Court should grant Nitek's administrative motion to have its Motion to Dismiss Under F.R.C.P. 12(B)(1) be heard in advance of the Case Management Conference currently set for August 18, 2008.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Defendant Nitek respectfully submits this administrative motion pursuant to Civil Local Rule 7.2 and Hon. Marilyn Hall Patel's Standing Order No. 4 requesting that Nitek's Motion to Dismiss Under F.R.C.P. 12(B)(1) be heard in advance of the Case Management Conference. The Court's Case Management Conference is currently scheduled for August 18, 2008. Nitek has filed a Motion to Dismiss and requests that this court allow the motion to be heard at an earlier date of July 28, 2008 or any date that the Court deems appropriate.

**II. ARGUMENT**

Nitek requests a date for hearing of this F.R.C.P. 12(B)(1) Motion to Dismiss in advance of the Court's currently scheduled Case Management Conference on August 18, 2008. Nitek contends that there is very good cause to allow the motion to be heard in advance of the Case Management Conference. Nitek has filed its current motion under F.R.C.P. 12(B)(1) which sets forth in more detail the circumstances, facts and law which give rise to the filing of the 12(B)(1) motion. In short, Nitek believes that an early hearing of this motion will result in the dismissal of the case and thus relieve the Court from having to conduct the Case Management Conference in August.

In its moving papers, Nitek points out that this is a second attempt by Plaintiff Network Video Technologies ("NVT") to obtain declaratory relief on a non-contested matter which has been previously adjudicated in the United States District Court for the Central District of California. In that action (before Judge Matz - Action No. CV 07-4787 AHM(RZx)) not only was the case dismissed, but an appeal has been taken by NVT and has been recently docketed before the Court of Appeals for the Federal Circuit on April 14, 2008. That case will proceed on appeal until briefed, argued and adjudicated. The filing of this second action is duplicative, and an end-around attempt to avoid the adjudication in the Central District. There is good cause and substantial reasons for the court to hear this matter in advance of the Case Management Conference to provide a swift adjudication of the issues and to avoid wasting judicial time and money.

1 **III. CONCLUSION**

2 For all of the above reasons, Nitek respectfully seeks the Court's indulgence in  
3 scheduling Nitek's Motion to Dismiss Under F.R.C.P. 12(B)(1) for hearing on July 28, 2008 at  
4 its normal time of 2:00 p.m. The Motion was e-filed on July 9, 2008 and a chambers copy  
5 delivered to Hon. Marilyn Hall Patel and is ready for review.

6 DATED: June 11, 2008

RESPECTFULLY SUBMITTED,

7 SEYFARTH SHAW LLP  
8 ROBERT S. NIEMANN  
9 GEORGE H. GERSTMAN (Applied for *Pro Hac Vice*)  
BRIAN MICHAELIS (Applied for *Pro Hac Vice*)

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11 Attorneys for Defendant  
12 NITEK INTERNATIONAL, LLC  
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